



October 19, 2010  
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Arnold Schwarzenegger  
Governor

Ms. Bouapha Toommaly  
Special Assistant to the Mayor  
City of Oakland, Office of the Mayor  
1 Frank H. Ogawa Plaza, Third Floor  
Oakland, CA 94612

Dear Ms. Toommaly:

AMERICAN RECOVERY AND REINVESTMENT ACT  
PROGRAM REVIEW  
FINAL MONITORING REPORT  
PROGRAM YEAR 2009-10

This is to inform you of the results of our review for Program Year (PY) 2009-10 of the City of Oakland Workforce Development Division's (City of Oakland) activities funded by the American Recovery and Reinvestment Act of 2009 (ARRA). We focused this review on the following areas: program administration, local level monitoring, management information system/reporting, incident reporting, nondiscrimination and equal opportunity, grievance and complaint system, and program operations including ARRA activities and participant eligibility.

This review was conducted by Mr. David Hinojosa from January 25, 2010 through January 29, 2010.

Our review was conducted under the authority of Sections 667.400 (a) and (c) and 667.410 of Title 20 of the Code of Federal Regulations (20 CFR). The purpose of this review was to determine the level of compliance by the City of Oakland with applicable federal and state laws, regulations, policies, and directives related to the ARRA grant.

We collected the information for this report through interviews with City of Oakland representatives, and service provider staff. In addition, this report includes the results of our review of selected case files, the City of Oakland's response to Sections I and II of the ARRA Program On-Site Monitoring Guide, and a review of applicable policies and procedures for PY 2009-10.

We received your response to our draft report on June 4, 2010, and reviewed your comments and documentation before finalizing this report. Because your response did

not adequately address findings 1, 2, 3, and 4 cited in the draft report, we consider these findings unresolved. We request that the City of Oakland provide the Compliance Review Office (CRO) with additional information and a corrective action plan (CAP) to resolve the issues that led to the findings. Therefore, these findings remain open and have been assigned Corrective Action Tracking System (CATS) numbers 10075, 10076, 10077, and 10078.

## **BACKGROUND**

For PY 2009-10, the City of Oakland was allocated \$1,220,952 in ARRA funding to serve adult participants; \$2,739,596 to serve youth participants; and \$1,805,371 to serve dislocated worker participants.

For the quarter ending March 31, 2010, the City of Oakland reported the following expenditures for its ARRA funded activities: \$112,979 for adult participants; \$2,260,356 for youth participants; and \$370 for dislocated worker participants. In addition, the City of Oakland reported the following enrollments: 77 adult participants; 1,038 youth participants; and 29 dislocated worker participants. We reviewed case files for the 2 participants enrolled in ARRA adult worker funded activities, as of January 25, 2010. In addition, we reviewed 23 case files stated to be ARRA adult and coded under WIA.

## **PROGRAM REVIEW RESULTS**

While we concluded that, overall, the City of Oakland is meeting applicable ARRA requirements, we noted instances of noncompliance in the following areas: ARRA implementation, contracts, workforce investment board (WIB) membership, and youth council membership. The findings that we identified in these areas, our recommendations, and the City of Oakland's proposed resolution of the findings are specified below.

### **FINDING 1**

**Requirement:** The American Recovery and Reinvestment Act of 2009, Section 3, states, in part, that the purpose of the Act is to preserve and create jobs, promote economic recovery, and to assist those most impacted by the recession.

Training and Employment Guidance Letter (TEGL) No. 14-08 states, in part, that the Recovery Act is intended to preserve and create jobs, promote the nation's economic recovery, and to assist those most impacted by the recession. The Recovery Act is to be used to increase employment and training services in order to assist workers who are facing unprecedented challenges

to retool their skills and re-establish themselves in viable career paths. If the workforce system is to meet both the letter and the spirit of the law and fulfill its critical role in U.S. economic recovery, the Recovery Act must be implemented expeditiously and effectively, with full transparency and accountability of our expenditure of funds.

Workforce Services Information Notice (WSIN)09-42, dated February 18, 2010, states, in part, that the system must implement ARRA expeditiously and effectively, with full transparency and accountability for the expenditure of funds.

**Observation:**

In April 2009, the City of Oakland was awarded \$1,220,952 to serve ARRA adult workers and \$1,805,371 to serve ARRA dislocated workers. As of December 31, 2009, the City of Oakland reported \$24,371 (2 percent) in expenditures for the ARRA adult program and no expenditures for the ARRA dislocated program.

For the same period, the City of Oakland had only enrolled two participants in its ARRA adult program and no participants in its ARRA dislocated worker program. Of the two participants enrolled, none were reported to have entered unsubsidized employment or were enrolled in training services. By December 31, 2009, 33.3 percent of the grant period had passed.

We noted that the subrecipients who were to provide services to the ARRA adult and dislocated workers, did not have a contract in place at the time of the onsite review or had only recently signed a contract. The English Center and the Unity Council signed contracts on December 27, 2009. The ASSETS and the LAO Family Center signed contracts on January 29, 2010. We reviewed 23 case files for participants that ASSETS stated were ARRA adult program participants coded as WIA adult.

As of March 31, 2010, the City of Oakland reported \$112,979 (6.25 percent) in expenditures for the ARRA adult program and only \$370 (.03 percent) in expenditures for the ARRA dislocated worker program.

For the same period, the City of Oakland had enrolled 77 participants in its ARRA adult program and 29 participants in its ARRA dislocated worker program. Of the 77 adult participants

enrolled, 3 were reported to have entered unsubsidized employment and no participants were enrolled in training services. Of the 29 dislocated worker participants enrolled, none were reported to have entered unsubsidized employment and only 2 were enrolled in training services. By March 31, 2010, 44.4 percent of the grant period had passed.

Although the increases in services and expenditures occurred in the March quarter, the delays in executing contracts with service providers has impacted the City of Oakland's ability to carry out the provisions of ARRA in an expeditious and effective manner in order to assist those most impacted by the recession.

**Recommendation:** We recommended that the City of Oakland provide a CAP, including a timeline, to CRO, detailing the actions they will take to expeditiously and effectively carry out the provisions of ARRA. This should include the status of all contracts with subrecipients who will be providing ARRA services.

**City of Oakland  
Response:**

The City of Oakland explained that the approval of the WIB budget and allocation of the 2009-2010 WIA Formula funds to the City of Oakland and WIB were delayed. Since then, activities have taken place that represent the Oakland WIB's effort to adjust its ARRA program in order to be in compliance with the program use of ARRA funds. The City of Oakland states they consulted with the State to utilize ARRA adult and dislocated worker funds to support both the WIA Formula and WIA ARRA expenses through December 2009. The City of Oakland anticipated reconciling the funding streams once the WIA Formula funds were available for use. The City of Oakland states all required adjustment entries have occurred. The City of Oakland provided a matrix listing the current enrollment numbers for each service provider. In addition, the City of Oakland listed steps it plans to take to accelerate the expenditure of ARRA Adult and Dislocated Worker funds as follows:

- 18 to 24 year-old clients enrolling in the Summer Youth employment program will be enrolled into the ARRA Adult program.
- The Oakland Private Industry Council (OPIC) will contract with several providers on the Employer Training Provider List (ETPL) to prepay for training courses for ARRA clients.

- The OPIC will reallocate an amount from currently budgeted funds to issue a Request-for-Proposal for adult employment services.
- The OPIC requested that the State transfer code 502 (WIA Dislocated Worker) funds to code 201 (WIA Adult) to serve more adults, and the WIB is working on such a transfer.

**State Conclusion:** Based on the City of Oakland's response, we cannot resolve this issue at this time. The City of Oakland did not include, as recommended, the status of all contracts with subrecipients who will be providing ARRA services. In addition, the documentation provided demonstrates, for the most part, that enrollments are still very low. Specifically, for ARRA Adults, 122 participants were enrolled with a goal of 238 (51 percent) and for ARRA Displaced Workers, 37 participants are enrolled with a goal of 159 (23 percent). As of June 30, 2010, there are 179 ARRA Adult participants (75 percent) and 43 ARRA Dislocated Worker participants (27 percent).

It is unclear as to the intent of its statements specified in the second bullet above. In any case, we caution the City of Oakland that any payments for services not provided is a potential questioned cost, as well as any payments that are not supported or are in violation of fiscal cost principles. The practice to prepay for training in anticipation that participants will benefit from the training, is considered a high-risk activity that can result in questioned costs.

Until the City of Oakland provides documentation to demonstrate they are expeditiously and effectively carrying out the provisions of ARRA, this issue remains open and is assigned CATS number 10075.

## **FINDING 2**

### **Requirement:**

29 CFR 97.36(i)(1-13) outlines the provisions that must be included in grantee's and subgrantee's contracts for government agencies.

29 CFR 95.48 appendix outlines the provisions that must be included in grantee's and subgrantee's contracts for non-profit entities.

29 CFR 97.36(b)(2) states, in part, that grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts.

**Observation:**

We found that the City of Oakland did not complete a contract to release funds to OPIC as Systems Administrator and as One-Stop Operator for the City of Oakland for PY 2009-10. As a result the City of Oakland could not ensure that OPIC was complying with all federal requirements as a condition of receiving ARRA/WIA funds. This issue was identified in PY 2007-08 and 2008-09.

In the past, the City of Oakland has always used a Memorandum-of-Understanding (MOU), rather than a contract, as the instrument to hold OPIC to terms and conditions for receiving funding. On April 9, 2010, the City of Oakland provided copies of signed MOUs for PY 2009-10 for System Administrator and for One-Stop Operator. In addition, they provided copies of an amendment to the MOUs for PY 2008-09 to include ARRA funding. Although these MOUs have been written to retroactively cover OPIC's operation beginning July 1, 2009, the fact remains that there was no system to hold OPIC accountable for the ARRA/WIA funds from the beginning of the program year to the date the MOU was fully signed on April 9, 2010. Even at that time, the MOUs still failed to include all requirements of a contract, as specified in federal regulations. In this specific case, the MOUs lacked the following:

- Contractual provisions or conditions that allow for administrative, contractual, or legal remedies, (other than a termination for cause and a non-performance clause), in instances in which a contractor violates or breaches the contract terms and provision for appropriate remedial actions.
- Provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

- Provisions to ensure compliance with Equal Employment Opportunity requirements.
- Copeland "Anti-Kickback" Act provision prohibiting each contractor or subrecipient to give up any part of their entitled compensation.
- Provisions under the Davis-Bacon Act that require contractors to pay the minimum prevailing wage.
- Provisions relative to Contract Work Hours and Safety Standards Act that addresses wages, work hours, and working conditions for contractors.
- Provision stating that the Federal Government retains the rights to any invention made under a Contract or Agreement.
- Provision that no contract shall be made to debarred, suspended, or otherwise parties from Federal Procurement or Nonprocurement Programs.
- Certification of a Drug-Free Workplace.
- Execution Dates.

**Recommendation:** We recommended that the City of Oakland incorporate the above bulleted items into their MOUs in order to serve as a valid contract with needed provisions and provide the documents to CRO once this is completed. This needs to be completed immediately for purposes of accountability and transparency.

**City of Oakland Response:** The City of Oakland stated they have always used an MOU rather than a contract, "as the instrument to hold the OPIC to terms and conditions for receiving funds". However, the City of Oakland also states that it will write contracts for both One-Stop Operator and Systems Administrator services. The contracts will be in place by July 1, 2010 and will include all required provisions.

**State Conclusion:** Based on the City of Oakland's response, we cannot resolve this issue at this time. We found that the City of Oakland did not write contracts as they stated it would in its June 4, 2010 response. Instead, the City of Oakland extended its existing MOU to December 2010, but added only three provisions from the ten provisions identified above.

- Provision stating that the Federal Government retains the rights to any invention made under a Contract or Agreement.
- Provision that no contract shall be made to debarred, suspended, or otherwise parties from Federal Procurement or Nonprocurement Programs.

- Certification of a Drug-Free Workplace.

On April 9, 2010, the City of Oakland again amended its MOU to add additional ARRA funds and extend the MOU to June 2011.

During the ARRA Fiscal-Procurement On-Site review in August 2010, we found that the City of Oakland took no action to attempt to comply with its stated corrective action plan submitted on June 4, 2010. Instead, the City of Oakland provided CRO with a first amendment to the MOU for Systems Administrator (July 1, 2009 through June 30, 2010) which extended the MOU to December 31, 2010 and added some provisions. A second amendment was provided adding \$12,624,149 in ARRA funds and allowing the MOU to continue to no later than June 30, 2011. In addition, the City of Oakland provided CRO with a first amendment to the MOU for One-Stop Operator (July 1, 2009 through June 30, 2010) which extended the MOU to December 31, 2010 and added some provisions.

We evaluated these MOUs and their amendments and determined that the Systems Administrator MOU and amendments still lack the following:

- Contractual provisions or conditions that allow for administrative, contractual, or legal remedies, (other than a termination for cause and a non-performance clause), in instances in which a contractor violates or breaches the contract terms and provision for appropriate remedial actions.
- Provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- Provisions to ensure compliance with Equal Employment Opportunity requirements.
- Copeland "Anti-Kickback" Act provision prohibiting each contractor or subrecipient to give up any part of their entitled compensation.
- Provisions under the Davis-Bacon Act that require contractors to pay the minimum prevailing wage.



- Provisions relative to Contract Work Hours and Safety Standards Act that addresses wages, work hours, and working conditions for contractors.
- Execution Dates.

We determined that the One-Stop Operator MOU and first amendment still lack the following:

- Contractual provisions or conditions that allow for administrative, contractual, or legal remedies, (other than a termination for cause and a non-performance clause), in instances in which a contractor violates or breaches the contract terms and provision for appropriate remedial actions.
- Provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- Provisions to ensure compliance with Equal Employment Opportunity requirements. (The MOU has this provision, however, it limits it relative to funds used for construction or repair.)
- Execution Dates.

The City of Oakland asserts that it uses an MOU to hold OPIC to terms and conditions for receiving funds, yet the MOU fails to contain the required provisions for all grantee and subgrantee contracts. Due to the City of Oakland's decision not to execute contracts with OPIC, we strongly recommend that the City of Oakland amend its MOUs to include the missing provisions to protect the WIA funds. In any case, all liabilities for the ARRA/WIA funds will remain the responsibility of the City of Oakland. We recommend that the City of Oakland provide CRO with copies of the amended MOUs once completed. Until then, this issue remains open and is assigned CATS number 10076.

### **FINDING 3**

#### **Requirement:**

WIA Section 117(b)(4) requires, in part, that each local board shall have a majority of the members representing business in the local area. In addition, membership of each local board shall

include representatives of economic development agencies and representatives of each of the one-stop partners.

**Observation:**

We observed that the Oakland WIB does not have a business majority. The WIB listed 48 members of which only 20 members are from the business community. As a result, nine additional business members are needed to establish a business majority. In addition, terms expired for three members representing an economic development agency, two one-stop partners, the Department of Rehabilitation, and Job Corps. The City of Oakland states that the expired terms are automatically extended for one year, however, they were unable to provide any documentation to support this claim.

There was a similar issue in PY 2007-08 and PY 2008-09 regarding a lack of business majority.

**Recommendation:**

We recommended that the City of Oakland provide a CAP, including a timeline, describing the steps that it is taking to obtain a business majority on the WIB, documentation showing the three listed member categories terms are extended, and provide CRO with a copy of the WIB roster after the vacancies are filled.

**City of Oakland Response:**

The City of Oakland stated that the WIB is recruiting new business members and that the board membership has not changed since May 2010. The City of Oakland also states that the roster lists the tenure end dates and that all members referenced in the report have been reinstated for another term as identified in the roster. On July 26, 2010, the City of Oakland provided CRO with an updated copy of the WIB roster showing the new terms for the three members from an economic development agency, a member from the Department of Rehabilitation, and the Job Corps. The WIB roster includes 20 business members and 24 non-business members.

**State Conclusion:**

Based on the documentation provided, we consider the issue of terms expired for three members representing an economic development agency, the Department of Rehabilitation, and Job Corps closed. However, the WIB roster still shows that the WIB does not have a business majority. We continue to recommend that the City of Oakland provide a CAP, including a timeline, describing the steps that it is taking to obtain a business majority on the WIB and provide CRO with a copy of the WIB roster after

the vacancies are filled. Until then, this issue remains open and is assigned CATS number 10077.

#### **FINDING 4**

**Requirement:**

WIA Section 117(h) states, in part, that membership of each youth council shall include representatives local public housing authorities, a parent of an eligible youth, and individuals, including former participants and representatives of organizations, that have experience relating to youth activities..

**Observation:**

We found that there is no representative of a local housing authority on the City of Oakland Youth Council. In addition, there is not a parent of an eligible youth nor a representative who is a former participant or representative of an organization the has experience relating to youth activities. The City of Oakland was not able to provide documentation showing the steps taken to obtain the memberships of the above representatives.

There was a similar issue in PY 2008-09.

**Recommendation:**

We recommended that the City of Oakland provide CRO with a CAP, including a timeline, for appointing a representative of a local housing authority, a representative who is a parent of an eligible youth and a representative who is a former participant or has experience relating to youth activities. We also recommended that the City of Oakland provide CRO with a copy of the updated youth council roster after the representatives are appointed.

**City of Oakland  
Response:**

The City of Oakland provided an updated Youth Council roster that includes a representative from Housing and Urban Development which fills the local housing authority category. The City of Oakland also stated that the Youth Council strategized in its May meeting about how to recruit youth and parents and that recruitment for youth participants and a parent of an eligible youth are on-going.

**State Conclusion:**

Based on the youth council roster provided, we consider the issue of no representative of a local housing authority closed. However, the remaining part of this issue will be closed once the City of Oakland provides CRO with documentation that it has filled its Youth Council vacancies for a former youth participant

and a parent of an eligible youth. Until then, this issue remains open and has been assigned CATS number 10078.

We provide you up to 20 working days after receipt of this report to submit your response to the Compliance Review Office. Because we faxed a copy of this report to your office on the date indicated above, we request your response no later than November 17, 2010. Please submit your response to the following address:

Compliance Monitoring Section  
Compliance Review Office  
722 Capitol Mall, MIC 22M  
P.O. Box 826880  
Sacramento, CA 94280-0001

In addition to mailing your response, you may also FAX it to the Compliance Monitoring Section at (916) 654-6096.

Because the methodology for our monitoring review included sample testing, this report is not a comprehensive assessment of all of the areas included in our review. It is the City of Oakland's responsibility to ensure that its systems, programs, and related activities comply with the ARRA grant program, federal and state regulations, and applicable state directives. Therefore, any deficiencies identified in subsequent reviews, such as an audit, would remain the City of Oakland's responsibility.

Please extend our appreciation to your staff for their cooperation and assistance during our review. If you have any questions regarding this report or the review that was conducted, please contact Ms. Mechelle Hayes at (916) 654-1292.

Sincerely,



JESSIE MAR, Chief  
Compliance Monitoring Section  
Compliance Review Office

cc: Gay Plair Cobb, OPIC  
Jose Luis Marquez, MIC 50  
Dathan O. Moore, MIC 50  
Linda Palmquist, MIC 50  
Daniel Patterson, MIC 45